



# City of Wenatchee

Department of Community and Economic Development

CITY OF WENATCHEE

Planning Division

AUG 14 2015

1350 McKittrick Street, Suite A  
Wenatchee, WA 98801  
(509) 888-3200

## APPLICATION FOR NOTICE OF APPEAL

Date Submitted: 8/14/15 Accepted By: YMB Receipt No. PL15-0025 File No. APP-15-02

### TYPE OF APPEAL YOU ARE APPLYING FOR:

- ☒ Administrative interpretations and decisions ☐ Historic Preservation Board or Planning Commission decision
- ☐ Shoreline administrative decision (excluding Substantial Development Permits) ☐ Reconsideration

### GENERAL INFORMATION

Appellant: Everett Green, Evergreen Ppt. Mgmt., Inc.

Mailing Address: 1869 Broadway Place, Wen, WA 98801

Contact No.: 509-679-5483 E-mail Address: evergreen747@gmail.com

State interest in matter: Owner/Applicant

File No.: BSP-15-02

Notice of Action/Decision Date: 07/31/15

### PROPERTY INFORMATION

Property Owner(s): same

Mailing Address: same

Contact No.: same E-mail Address: same

Property Address(es): 105 Lavender Ct, Wenatchee, WA 98801

Parcel No(s): 22-20-09-110-100

Legal Description (attach separate sheet if necessary): E 285' of W 310' of S 1/2 of NE of NE of NE 1/4, Twn 22 N, R 20 E W M, Chelan County.

### REASON FOR APPEAL OR RECONSIDERATION

Please provide on a separate sheet the specific reasons why the appellant believes the decision to be wrong, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous, and the specific desired outcome or changes to the decision. The appellant shall bear the burden of proving the decision was wrong. Please attach any other supporting documents. For reconsiderations please also address criteria in WCC 13.11.0609(1).

**Appeals:** Every appeal to the hearing examiner or historic preservation board shall be filed with the city within 14 days after the date of the decision of the matter being appealed. If the 14-day period ends on a weekend or on a holiday, the following working day shall be the fourteenth day.

**Reconsiderations:** Requests must be submitted within 10 days from the date of issuance as defined by RCW 36.70C.040(4)(a), together with the materials identified by WCC 13.11.030(2).

Appellant Signature: Everett Green

Date: 8/14/15

## APPEAL OF FINAL DECISION BINDING SITE PLAN BSP-15-02

This document is attached to the Appellant's Application for Notice of Appeal dated August 14, 2015, and sets forth the Appellant's reasons for appeal of the Final Decision on Binding Site Plan BSP-15-02 dated July 31, 2015.

### ***Project Overview***

The Applicant proposes to divide a single legal lot of record into two legal lots of record. No new improvements are proposed and no modifications to existing improvements are proposed. Use of the subject property before and after approval of the subject Binding Site Plan will be identical. The proposal, if approved, will have no impact on public services.

### ***Identification of Challenged Findings, Conclusions, and Conditions***

Appellant challenges the following:

Findings of Fact:	No. 16
Conclusions of Law:	Nos. 2, 4, 5, and 6
Conditions of Approval:	Nos. 3, 4, 5, 7, 8, and 9

### ***Reasons for Appeal***

The challenged Findings, Conclusions, and Conditions have one thing in common: they either impose conditions, incorporate those imposed conditions by reference, or purport to validate those imposed conditions. The Appellant's contention on this Appeal is that none of the challenged Conditions of Approval may be lawfully imposed because the BSP, if approved, would have no impact. Conditions for public approval of proposed land use actions – also known as “exactions” – are lawful only where they are found to be necessary to offset the probable impact of the proposal. Without an “essential nexus” or a “rough proportionality” between a proposal's probable impact and the condition for approval sought to be imposed on the developer – be it an impact fee, a dedication of land, or incurring costs

to improve public services or facilities – the condition fails as an unconstitutional taking under the Fifth Amendment to the United States Constitution.

For example, in *Benchmark Land Co. v. City of Battle Ground*, 94 Wash. App. 537, 972 P.2d 944 (1999), *aff'd after remand on other grounds*, 146 Wn.2d 685, 49 P.3d 860 (2002), Division II of our Court of Appeals invalidated the city's requirement that a subdivider pay for certain street, sidewalk, and drainage improvements when the City had made no showing of how the subdivision would create any need for such improvements.

Here, similarly, without a showing that approval of the Binding Site Plan under review on this appeal would have an impact on public services and facilities there is simply no legal justification for the imposition of any conditions. As an example, the requirement in the Engineer's Report dated July 23, 2015, (incorporated by reference in Condition of Approval No. 3) that the Applicant, among other things, construct three access approaches and install a drainage collection system cannot be sustained under a Fifth Amendment takings analysis because there has been showing that these improvements are necessary in order to alleviate a public problem created by the proposal. Again, the proposal under review is simply to divide a single lot into two lots with no proposal for additional improvements, no proposed modifications to existing improvements, and no change in the pre-existing burden on public services or facilities.

The proposed conditions are not saved because they are purportedly required by a City Ordinance. That argument was raised in the *Benchmark* case and rejected by the Court of Appeals because the ordinance in that case, as with the Ordinance here, did not require a site-specific evaluation as mandated by the Fifth Amendment. *Benchmark Land Co. v. City of Battle Ground*, supra, 94 Wash. App. at 547 ("We conclude that the City's ordinance does not meet *Dolan's* requirement of rough proportionality based upon a site-specific study.")

### ***Relief Sought***

The challenged Findings, Conclusions, and Conditions should be struck from the Final Decision and, as so amended, the Final Decision should be upheld.



**City of Wenatchee**  
1350 McKittrick, Suite A  
Wenatchee, WA 98801

**Receipt Number: PL15-00025**

**Payer/Payee:** EVERGREEN PROPERTY MANAGEMENT  
INC  
% PARK CIRCLE APARTMENTS  
WENATCHEE WA98801

**Cashier:** MBOLES  
**Payment Type:** CHECK (2430)

**Date:** 08/14/2015

**APP-15-02**

**APPEAL**

**105 LAVENDER CT UNIT 1**

**Fee Description**

**Fee Amount**

**Amount Paid**

**Fee Balance**

Appeal of Administrative Decision to Hearing Examiner

\$500.00

\$500.00

\$0.00

**APP-15-02 TOTALS:**

**\$500.00**

**\$500.00**

**\$0.00**

**TOTAL PAID:**

**\$500.00**